

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Francis Wooters,

Plaintiff

v.

Bank of America, N.A., et al.,

Defendants

Case No. 2:22-cv-01691-CDS-BNW

Order Granting Defendant's Motion to
Dismiss

[ECF No. 44]

Plaintiff Francis Wooters brings this Fair Credit Reporting Act suit against defendant Bank of America, N.A. (BANA) for an alleged FCRA violation. Wooters' sole claim against BANA arises under the FCRA, 15 U.S.C. § 1681, and he contends that BANA inaccurately reported a balance on his account to Trans Union. BANA moves to dismiss the claim, arguing that a plaintiff must identify inaccurate information in their credit report to bring a § 1681 violation and that Wooters does not. It adds that, even if it did violate the FCRA, Wooters has not demonstrated that he was injured by its actions. I find that Wooters has failed to state a claim that BANA inaccurately reported his balance. I thus grant BANA's motion to dismiss and dismiss Wooters' claim against it, but I grant Wooters leave to amend to cure the deficiency that I have identified.

I. Legal standard

Under the Federal Rules of Civil Procedure, a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). In considering a motion to dismiss, "all well-pleaded allegations of material fact are taken as true and construed in a light most favorable to the non-moving party." *Wylar Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, legal conclusions are not awarded this same presumption just because they are cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*,

1 550 U.S. 544, 555 (2007). A plaintiff must make sufficient factual allegations to establish a
2 plausible entitlement to relief. *Id.* at 556. And if I grant a motion to dismiss, I should grant leave
3 to amend even if no request to amend is made unless I determine that the pleading could not
4 possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.
5 2000).

6 II. Discussion

7 Wooters brings his claim under the FCRA, alleging that BANA violated 15 U.S.C.
8 § 1681s-2(b) by reporting factually inaccurate information to various consumer reporting
9 agencies. The statute prescribes various duties to furnishers of information upon notice of
10 dispute, including the duties to investigate the disputed information, to report the results of the
11 investigation to the consumer reporting agency, to report inaccurate or incomplete information
12 to all other consumer reporting agencies, and to modify, delete, or permanently block reporting
13 of the inaccurate or incomplete information. 15 U.S.C. § 1681s-2(b). He contends that BANA's
14 reporting of a \$4,231 balance was inaccurate because that debt was discharged during his
15 bankruptcy. ECF No. 49 at 7. BANA responds that, while it reported Wooters as having a \$4,231
16 balance that was past due, it also reported the account as discharged in bankruptcy and that no
17 amount would be due in the future. ECF No. 55 at 2. In sum, BANA contends that Wooters
18 "cherry[-]picks alleged factual inaccuracies from his credit report in an attempt to create an
19 actionable reporting violation." *Id.*

20 A credit report may be inaccurate because it is "patently incorrect, or because it is
21 misleading in such a way and to such an extent that it can be expected to adversely affect credit
22 decisions." *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. 2010). Wooters argues
23 that BANA's reporting of his past-due balance is inaccurate because it adversely affects his
24 credit decisions, but he fails to demonstrate that BANA's information was actually incorrect or
misleading. As BANA points out, Wooters relies on various cases in which a creditor listed a
past-due balance but failed to report the plaintiff's bankruptcy discharge. ECF No. 55 at 4. But

1 BANA asserts, and Wooters does not dispute, that it in fact *did* list the account as discharged in
 2 bankruptcy, with no future payments being required. And courts around the country have not
 3 found actionable FCRA claims in such circumstances, because descriptions of accounts
 4 discharged in bankruptcy are “neither ‘patently incorrect’ nor ‘misleading in such a way and to
 5 such an extent that [they] can be expected to adversely affect credit decisions.’” *Franklin v. Trans*
 6 *Union, LLC*, 2019 WL 6871254, at *3 (C.D. Cal. Oct. 8, 2019) (quoting *Gorman v. Wolpoff &*
 7 *Abramson, LLP*, 584 F.3d 1147, 1163 (9th Cir. 2009)). As another judge in this District has put it, a
 8 “successful FCRA claim must make a direct allegation that a defendant’s report of a past[-]due
 9 balance indicates that the balance is still outstanding.” *Harris v. Nissan-Infiniti LT*, 2018 WL
 10 2741040, at *3 (D. Nev. June 7, 2018). And Wooters fails to allege that BANA’s report of his
 11 discharged balance gave any indication that his balance was still outstanding. *See* Compl., ECF
 12 No. 1 at 10–11. I thus grant BANA’s motion to dismiss Wooters’ sole claim against it.

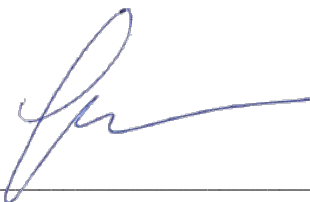
13 However, I grant Wooters leave to amend to resolve the problem I have identified in his
 14 complaint. If he can plausibly plead that BANA (1) did not, in fact, list the account as discharged
 15 in bankruptcy and/or (2) that it listed the account as requiring future payments, then Wooters
 16 could state a claim for relief under the FCRA.

17 III. Conclusion

18 For the foregoing reasons, IT IS HEREBY ORDERED that defendant Bank of America,
 19 N.A.’s motion to dismiss [ECF No. 44] is GRANTED. The plaintiff’s claim against it is
 20 dismissed without prejudice.

21 IT IS FURTHER ORDERED that Wooters has until August 19, 2023, to amend his
 22 complaint to cure the deficiency I have identified herein.

23 DATED: July 19, 2023

24 
 Cristina D. Silva
 United States District Judge